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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NAVAJO NATION HUMAN RIGHTS
COMMISSION; PEGGY PHILLIPS; MARK
MARYBOY; WILFRED JONES; TERRY
WHITEHAT; BETTY BILLIE FARLEY;
WILLIE SKOW; and MABEL SKOW,

Plaintiffs,

v.

SAN JUAN COUNTY; JOHN DAVID
NIELSON, in his official capacity as San Juan
County Clerk; and PHIL LYMAN, BRUCE
ADAMS, and REBECCA BENALLY, in their
official capacities as San Juan County
Commissioners,

Defendants.

**MOTION TO DISMISS OFFICIAL
CAPACITY CLAIM**

Case No. 2:16-cv-00154 JNP

Judge Jill N. Parrish

Magistrate Judge Brooke C. Wells

Oral Argument Is Not Requested

SAN JUAN COUNTY; JOHN DAVID	:
NIELSON; PHIL LYMAN, BRUCE	:
ADAMS; and REBECCA BENALLY	:
	:
Counterclaim Plaintiffs,	:
	:
v.	:
	:
NAVAJO NATION HUMAN RIGHTS	:
COMMISSION; PEGGY PHILLIPS; MARK	:
MARYBOY; WILFRED JONES; TERRY	:
WHITEHAT; BETTY BILLIE FARLEY;	:
WILLIE SKOW; and MABEL SKOW,	:
	:
Counterclaim Defendants.	:
	:

Plaintiffs have commenced this action under the *Voting Rights Act*,¹ and the *Fourteenth Amendment* to the United States *Constitution* challenging San Juan County, Utah’s conduct of elections by mail-in-ballots. Plaintiffs have named as defendants San Juan County, Utah, San Juan County Commissioners Bruce Adams, Rebecca Benally and Phil Lyman as well as San Juan County Clerk-Auditor, John David Nielson. Plaintiffs have named all of the individual defendants solely in their “official capacity.”² However, because San Juan County is also named as a defendant in this action, naming the individual defendants in

¹ 52 U.S.C. §§ 10301 and 10503.

² See *Complaint*, Dkt. 2, ¶¶ 22, 23, 24 and 25.

their official capacities is unnecessary and redundant.

Wherefore, pursuant to *Federal Rules of Civil Procedure* 12(b)(6) and 12(c), Defendants Adams, Benally, Lyman and Nielson hereby move to dismiss Plaintiffs' claims with prejudice. **Oral argument is not requested.**

ARGUMENT

When government officials are sued in their official capacities and the governmental entity is also sued, the law requires dismissal of the official capacity suits.³ Simply stated, civil actions are “pleaded against a municipality either by naming the municipality itself or by naming a municipal official in his or her official capacity. Naming either is sufficient. Naming both is redundant.”⁴

³ See *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)(official-capacity suits are another way of pleading an action against an entity of which an officer is an agent). See also *Hardy v. Town of Hayneville*, 50 F.Supp. 2d 1176, 1185 (N.D. Ala. 1999); *Luke v. Abbott*, 954 F. Supp 202, 203 (C.D. Cal. 1971); *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996); *Carnell v. Grim*, 872 F. Supp. 746, 752 (Haw. 1994); *Willis v. Bell*, 726 F. Supp. 1118, 11124 (N.D. Ill. 1989); *Dusenberry v. County of Kauai*, 1996 U.S. Dist. LEXIS 13245, *7(unpublished)(D. Haw., October 12, 2007); *Williams v. City of Sagmaw*, 2002 U.S. Dist. LEXIS 14391, *13 (E.D. Mich., August 2, 2002)(unpublished)(collecting cases in which district courts have dismissed official capacity suits against municipal employees when governmental entity was also named as a defendant). See also *Pumery v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999)(a suit against a public employee in his or her official capacity is merely a suit against the public employer).

⁴ *Stump v. Gates*, 777 F. Supp. 808 n.3 (D. Colo. 1991)

CONCLUSION

Because San Juan County is named in the lawsuit, the official capacity claims against the individual Defendants are redundant and unnecessary. As such, they should be dismissed with prejudice.

DATED this 5th day of April, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2016, I electronically filed the foregoing document with the U.S. District Court for the District of Utah. Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

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